

**Letter of Findings Number: 03-20140619**  
**Withholding Tax**  
**For Tax Years 2011-2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Retail business failed to meet its burden of proof regarding the withholding of tax on employee wages.

**ISSUE**

**I. Withholding Tax—Burden of Proof.**

**Authority:** IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 3.1-1-97](#).

Taxpayer protests the proposed assessment of withholding tax.

**STATEMENT OF FACTS**

Taxpayer is a retailer operating a convenience store that sells gasoline. Taxpayer is incorporated and elected to file as an S-corporation. The Indiana Department of Revenue ("Department") conducted an audit for withholding tax, among other taxes that were audited, which resulted in proposed assessment of tax. Taxpayer protested and an administrative hearing was held; this Letter of Findings results. More facts will be provided as needed below.

**I. Withholding Tax—Burden of Proof.**

**DISCUSSION**

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The audit report cites to [45 IAC 3.1-1-97](#) regarding the duty of corporations to withhold state and county taxes on employee wages. The report states:

The taxpayer's payroll is far below the industry standard. Either employees are not being paid the minimum wage for the number of hours worked or the number of hours worked are not all being documented.

The auditor used the "audited gross receipts as determined from the Corporate Income tax audit conducted . . . multiplied by the percentage of compensation of officers and the percentage of salary and wages per Bizstats.com to determine total payroll. The total payroll is now comparable to the number of hours worked during operations by two people at the minimum wage."

Taxpayer's protest does not cite to any statutes, regulations, or cases, nor does Taxpayer's protest address the withholding tax issue. The Department finds that Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (quoting *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)).

### **FINDING**

Taxpayer's protest is denied.

*Posted: 02/24/2016 by Legislative Services Agency*  
An [html](#) version of this document.